

Supply of Services: Overview (Brazil)

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A Practice Note providing an overview of key considerations when drafting or negotiating business-to-business supply of services contracts in Brazil. This Note reviews the legal framework, use of standard terms, and key topics that typically arise in supply of services contracts, including service provider and customer obligations, price, payment, tax, deliverables, service delivery considerations, warranties, indemnities, and liability concerns. It also includes an overview of customer and service provider remedies and discusses choice of foreign law and jurisdiction, and other dispute resolution options.

Buying and supplying services outside of one's jurisdiction is a daunting task, as the number of topics to consider can seem overwhelming. The scope of services included in supply of services contracts can also vary significantly, from one-time consulting engagements and ongoing services projects to multi-jurisdictional outsourcing transactions.

This Practice Note provides an overview of key considerations when drafting or negotiating business-to-business (B2B) supply of services contracts in Brazil, regardless of the services involved. It includes important legal and contractual issues that frequently arise and common remedies available to the parties in supply of services contracts.

For more information on supply contracts, see [Supply of Goods and Services Toolkit \(International\)](#).

Legal Framework for Services Contracts

General Framework

In Brazil, contracts for the supply of services are governed primarily by the [Civil Code](#) (*Código Civil*) (Law No. 10,406/2002), which establishes the general principles of contract formation, validity and enforceability.

In addition, other specific laws and regulations may apply depending on the nature of the services being provided to the customer, for example:

- Services provided to public authorities are subject to [Law No. 14,133/2021](#) (known as the Public Procurement Law).
- Services involving the processing of personal data must comply with the General Data Protection Law ([Law No. 13,709/2018](#) (*Lei Geral de Proteção de Dados Pessoais*)) (LGPD). See [Privacy and Data Protection](#).
- Banking, financial and payment services in Brazil are subject to framework statutes and extensive sector-specific regulation. For example:

- [Law No. 4,595/1964](#), which structures Brazil's [National Financial System](#) and sets out the regulatory framework applicable to banking and other regulated financial activities; and
- [Law No. 12,865/2013](#), which establishes the legal framework for payment arrangements and payment institutions.

Depending on the type of service, additional rules issued by the [National Monetary Council](#) (*Conselho Monetário Nacional*) and the [Brazil Central Bank](#) (*Banco Central Do Brasil*) may also apply.

- Telecom services are regulated by the [National Telecommunications Agency](#) (*Agência Nacional de Telecomunicações*) (ANATEL). Telecoms services are governed by various laws, most notably:
 - [Law No. 9,472/1997](#) (known as the General Telecommunications Law), which establishes the regulatory framework for the telecoms sector and provides ANATEL with its supervisory and regulatory powers; and
 - [Telecommunications Code](#) (*Código de Telecomunicações*) (Law No. 4,117/1962), which establishes the main guidelines for broadcasting.
- Anti-bribery and anti-corruption rules. See [Anti-Bribery and Anti-Corruption](#).

It should also be noted that the concept of "consumer" is broad under Brazilian law. Therefore, depending on the facts, there may be circumstances in which Brazil's consumer protection rules (most notably those set out in the [Consumer Protection Code](#) (*Código de Defesa do Consumidor*) (Law No. 8,078/1990)) could also be applied to transactions formally structured as B2B. See [Contracting with Consumers: Overview \(Brazil\)](#).

Legal Formalities

Brazilian law follows the principle of freedom of form, which means contracts are generally valid regardless of their form (oral, written, or implied), unless:

- The format is prohibited.
- A specific format for the contract has been made mandatory under Brazilian law.
- The content of the contract infringes mandatory rules, such as rules under the Consumer Protection Code.

However, certain types of transactions must be in writing or registered with specific registries or regulatory authorities. For example, pledge agreements, real estate contracts, and contracts with public authorities must be in writing.

Contracts must meet the essential requirements for formation and validity. These include:

- Capacity (that is, the parties must all be legally capable of entering into the agreement).

- A clear and determinable or determined object.
- A format that complies with Brazilian law.

(Articles 104(iii) and 115(iv), Civil Code.)

Notarisation or registration is generally not required for a service contract to be valid and enforceable among the parties.

It is possible for service contracts to be executed in a language other than Portuguese. However, if there is a request for the contract to be taken to any Brazilian authority, including the Brazil courts, only a sworn translation of the contract, or a signed Portuguese version, can be accepted.

For more information on the execution requirements for commercial contracts in Brazil, see [Practice Note, Contract Execution \(Brazil\)](#) and Quick Compare Charts:

- [Contract Execution – The Execution Clause \(Signing Block\)](#).
- [Contract Execution – Notarization](#).
- [Contract Execution – Electronic Signature](#)
- [Contract Execution – Recorded or Registered Contracts](#).
- [Contracts – Creating Enforceable Contracts](#).

Use of Standard Terms

Standard terms can be used although their use is usually limited to standardised or high-volume and recurring services. For complex negotiations, parties tend to negotiate specific clauses.

Under the principle of freedom of form, standard terms can be incorporated into the contract in several ways, provided the terms are clear and have been expressly agreed. This can be done by including or incorporating the term:

- Directly in the body of the contract.
- In an annex to the main contract.
- By reference to a purchase order, statement of work, or other document (provided the reference is explicit and they are accessible to the other party).

To mitigate the risk of incorporating standard terms that may be inconsistent with other parts of the contract, it is common practice for parties to include a conflict resolution clause stating that either:

- Certain negotiated provisions will prevail over the standard terms.
- The standard terms will prevail over any other provisions.

In the case of adhesion contracts (that is, where one party has a much stronger bargaining position and requires adherence to its terms), Articles 423 and 424 of the Civil Code provide that:

- Any ambiguous or contradictory clauses must be interpreted in favor of the adhering party.
- Any provisions requiring a party to waive in advance any rights that are inherent to the nature of the agreement are null and void.

Supply of Services Contract: Key Terms

While issues that arise can vary significantly, this section provides an overview of key topics to consider when drafting and negotiating supply of services contracts in a B2B context.

Service Provider's Obligations

Implied Service Provider Obligations

Brazilian law implies certain obligations on the service provider even when not expressly agreed by the parties, such as:

- **Probity and good faith.** The service provider should observe general principles of **probity** and good faith. These apply both during contract formation and throughout its performance, except where otherwise agreed or dictated by local practice.
- **Time of payment.** The service provider must perform the contracted services before payment is due, although advance or instalment payments may be negotiated.

Although beyond the scope of this Note, in the context of public procurement contracts, Law No. 14,133/2021 requires the parties to include essential clauses to ensure transparency and enforceability. For example, certain indemnity and termination provisions are automatically applicable. Failure to comply may result in remedies such as indemnification, termination, or specific performance.

Service Provider Personnel

Brazilian law generally does not regulate the number, duties, or qualifications of the service provider's personnel, except where the nature of the service demands professional licensing (for example, contracts involving engineers, lawyers, healthcare professionals). Parties are therefore free to agree on such matters, including binding the service provider to comply with any applicable legal and safety standards. However, in the case of public procurement contracts, Law 14,133/2021 sets out that both technical-professional and technical-operational qualifications must be duly demonstrated through appropriate documentation and proof of experience.

For projects where continuity and expertise are critical, it is common to include a key personnel clause, which may:

- Require the prior written consent from the customer before replacing designated key personnel.
- Obligate the service provider to replace the personnel, at the customer's request, with individuals that have equivalent qualifications and experience.

Providers often seek to protect their workforce by including non-solicitation clauses in the contracts.

Service Levels

It is typical for services contracts in Brazil to include service levels, especially in sectors such as IT, telecommunications, logistics, and utilities or where the service is critical (in whole or in part). Service levels can be documented:

- In a separate [Service Level Agreement](#) (SLA).
- As part of the main contract.

Levels of service are commonly described on the basis of:

- Availability or uptime.
- Response and resolution times.
- Quality standards and delivery deadlines.

If a service provider fails to meet the agreed service levels, the typical remedies are:

- Monetary credits for future invoices.
- Pre-agreed penalties.
- Termination of the contract, without prejudice to indemnification for losses and damages (except if otherwise provided in the contract).

There is no statutory requirement under Brazilian law to provide a cure period. However, service agreements commonly include cure periods for failures to meet service levels, particularly in long-term or complex service arrangements. Local practice leans toward proportional remedies and the principle of good faith. Therefore, contracts typically provide for a cure period before termination, as an alternative to automatic termination.

Time for Performance

Timeframes for performance are usually defined either:

- Within the contract's main provisions.
- In specific schedules.

These provisions typically:

- Establish start and end dates, milestones, or both.
- Link performance timing to service level obligations.
- Include measurable deadlines expressed in calendar or business days.

As mentioned above, local practice prefers proportional remedies and good faith. Therefore, contracts typically provide for a cure period before termination, as an alternative to automatic termination for minor delays. "Time is of the essence" clauses are generally applied to critical obligations, where a failure to meet a specific deadline constitutes material breach, and allow for termination without prior notice. Certain remedies such as liquidated damages, withholding or delaying payments, or other types of penalties (in addition to damages) are relatively common. Otherwise, the default remedy is claiming actual losses and damages under the Civil Code.

Transition Assistance

There is no general statutory obligation requiring providers to provide transition assistance when a customer moves the services from one provider to another. Parties are, however, free to address this matter contractually. Provisions offering transition assistance are common in complex or long-term service agreements, especially in relation to IT outsourcing, facilities management, or business process services. When agreed by the parties, such clauses typically set out:

- The relevant transition period.
- The scope of assistance that will be provided.
- The name of new SLAs appointed during the transition period.
- Any different or alternative payment arrangements applicable during the transition period.

Anti-Bribery and Anti-Corruption

Brazil has several laws focused on preventing bribery and corruption, including:

- [Law No. 12,846/2013](#) (known as the Anti-Corruption Law). This holds companies liable for harmful acts against the public administration, whether national or foreign. Forbidden acts include (among others):
 - offering undue advantages to public officials;

- bid-rigging; or
- obstructing investigations.

Law No. 12,846/2013 applies strict liability (that is, regardless of fault). Given that this law also has extraterritorial application, it is possible for companies that engage in any prohibited acts against foreign governmental agencies, entities, or diplomatic representations, or legal entities controlled by foreign governments, to also be held liable.

- [Law No. 12,813/2013](#) (known as the Conflict of Interest Law). This regulates conflicts of interest between the exercise of public functions and private activities. Forbidden acts include, for example, offering inappropriate gifts or undue advantages to public officials to gain influence over matters of interest to a company or organisation.
- [Law No. 8,429/1992](#) (known as the Administrative Improbity Law). This law punishes acts of administrative improbity committed by public officials and private parties that cause damage to the public treasury or who violate the principles of public administration. Forbidden acts include illicit enrichment and obtaining confidential information by offering undue advantage.
- [Criminal Code](#) (*Código Penal*) (Decree-Law No. 2,848/1940) (as amended). This sets out the main criminal acts in relation to bribery and corruption. The Criminal Code also includes criminal sanctions to punish individuals who offer undue advantages to public officials.

It is common for contracts to include clauses requiring parties to both be aware of these laws and to explicitly comply with them. They may also include provisions stipulating that, if a party fails to comply with any of such laws:

- The contract may be terminated.
- The breaching party must compensate the non-breaching party for any losses and damages resulting from the breach and termination.

Privacy and Data Protection

The LGPD establishes the main rules and obligations for data processing activities in Brazil, including for:

- The processing of data collected in Brazil.
- The processing of data which concerns individuals located in Brazil.
- Data processing activities carried out for the purpose of offering goods or services to individuals in Brazil.

Where personal data is transferred outside of Brazil, the transfer is only deemed lawful when carried out in accordance with specific legal mechanisms, such as:

- When appropriate safeguards are followed according to specific or standard contractual clauses.
- When carried out subject to international corporate rules, stamps, certificates, or codes of conduct.
- When carried out in accordance with an associated adequacy decision (that is, where the transferee country or organisation has been designated by the LGPD as having an adequate level of data protection).
- When carried out subject to the data subject's specific consent (and when they have specifically consented to the data transfer outside of Brazil).
- When the transfer is necessary to comply with a legal or regulatory obligation by a data controller.
- When necessary to perform or effect a valid contract, or when completing a necessary step prior to the formation of a contract.

(LGPD.)

Service contracts that involve the processing of personal data usually include specific data protection clauses or a separate Data Processing Agreement (DPA). The provisions of the DPA generally address matters regarding:

- The roles and responsibilities of the parties.
- Compliance obligations.
- Security measures.
- Incident reporting.
- Co-operation.
- International transfers (including relevant standard contractual clauses, when applicable).
- Audit and monitoring.
- Indemnity and liability.

For more information on data protection and data security in Brazil, see [Practice Note, Identifying Data Protection Issues for a New Product or Service: Latin America](#).

Restrictions on Supplying Customer's Competitors

Service contracts may contain exclusivity clauses preventing service providers from providing their services to their customer's competitors. These are typically found in strategic or high-value contracts or contracts that provide access to the customer's sensitive information or trade secrets. If such provisions are used, they typically set out:

- The scope of the restriction (that is, specific competitors, industry segment, services, or geographic area).
- The duration of the restriction.
- Whether there are exceptions to the restriction.
- The penalties or required indemnification in case of breach of the obligation.

Exclusivity clauses are generally enforceable if they respect constitutional principles of free competition and free initiative and do not violate matters of public order. [Law No. 12,529/2011](#) (known as the Competition Law) provides that Brazil's national competition authority, the [Administrative Council for Economic Defense](#) (*Conselho Administrativo de Defesa Econômica*) (CADE), will review, on a case-by-case basis, the legality of an exclusivity clause by:

- Considering whether the service provider or customer has a dominant position in the affected market. A dominant position is presumed if it has a market share of 20% or more, or if it can shape market conditions on its own.
- Considering whether any reasonable economic justifications exist for the exclusivity clause, such as (among others):
 - the protection of investments made by consumers that could be used to provide services to their competitors;
 - the preservation of quality and service standards; or
 - the protection of strategic and confidential information.
- Weighing any economic efficiencies against the potential damage to competition. For example, when the clause:
 - increases competitors' operational costs by limiting their ability to compete or forcing them to rely on more expensive or less efficient service providers;
 - makes it difficult or impossible for customer's competitors to sell their products or services;
 - makes it difficult for new competitors to emerge; or
 - facilitates coordination among competitors.

So far, CADE has permitted exclusivity clauses on the basis of:

- The exclusivity not being proven.
- The company not holding a dominant position in the affected market.

- The clause providing the relevant efficiencies referred to above.
- The characteristics of the affected market excluding the negative effects (such as the presence of numerous competitors, limited restrictions on the emergence of new competitors, alternative means of acquiring services and so on).
- The complaint being deemed a private contractual dispute rather than an antitrust issue by CADE.

For more information on the laws and regulations governing abuse of dominance and monopolisation in Brazil, see [Practice Note, Abuse of Dominance in Brazil](#).

Other Service Provider Obligations

A contract for the provision of services typically places other obligations on the service provider in addition to performance duties and payment terms. These include provisions relating to:

- Confidentiality. The service provider is typically required to keep all information received from the customer confidential. This is usually a mutual obligation. However, the service provider is often subject to more stringent requirements. For the key issues a foreign party should consider when entering into a confidentiality agreement in Brazil, see [Practice Note, Confidentiality Considerations: Overview \(Brazil\)](#).
- Compliance with law. The contract typically requires the service provider to comply with all applicable laws, including employment, data protection, tax and anti-corruption. Depending on the nature of the services, providers must ensure that their personnel also comply with all occupational health and safety standards. These are usually mutual obligations, especially in relation to anti-corruption and data protection.
- Data protection. For contracts where the processing of personal data is involved, service providers must process such data in accordance with Law No. 13.709/2018. Typically, obligations on purposes, security measures, incident reporting, cooperation, and international transfers should also be included. See [Privacy and Data Protection](#).
- Insurance. Service providers may be required to maintain professional liability insurance or other coverage. See [Insurance](#).
- Intellectual property (IP). There is usually an obligation for the service provider to both respect customer's IP as well as rules governing any IP rights created during the implementation of the services. This is usually a mutual obligation. However, the service provider is often subject to more stringent rules. See [Intellectual Property Rights](#).
- Non-solicitation. Parties are prohibited from soliciting or hiring the other party's employees during and for a period after the contract term. Such a provision is often one-sided (to protect the service provider from a customer soliciting with its employees) but the obligation can be mutual in some cases.
- Non-compete obligations. These types of obligations are less common for service arrangements, but such clauses may appear in strategic or long-term contracts, especially where the provider has access to sensitive business information. These clauses restrict the provider from engaging in activities that compete with the client's business, either directly or indirectly, during the contract term and for a specified period after termination.

- **Scope variation.** It is common for any change to the scope of a contract to be subject to prior written authorisation by the customer. Approved variations typically trigger corresponding adjustments to timelines, responsibilities, and pricing.
- **Price adjustments.** Due to inflationary pressures in Brazil, contracts commonly include price adjustment mechanisms tied to local indexes or other economic indicators. Service providers may be required to apply such adjustments periodically or upon specific events, subject to legal limitations. See [Price Adjustment Mechanisms](#).
- **Specifications and quality.** Service providers must adhere to detailed specifications, technical standards, and service levels defined by the customer. Failure to meet minimum quality thresholds often leads to corrective measures, re-performance obligations, penalties, or contractual remedies. See [Implied Terms](#).
- **Defects and warranties.** It is common for service contracts to impose obligations to remedy defects, shortcomings, or non-conformities identified during the warranty period. Providers may be required to correct such issues at their own cost, and customers may have the right to withhold payment or seek replacement services if defects persist. See [Warranties, Conditions, and Representations](#).
- **Joint and several liability.** Depending on the nature of the engagement (for example, where subcontractors are used) the service provider and its controlling shareholders may be subject to joint and several liability for obligations arising from the contract, including labour, tax, and performance-related liabilities.
- **Indemnification.** It is common for the contract to stipulate that the service provider will indemnify the customer against losses, damages, third-party claims, governmental fines, penalties, and liabilities resulting from breaches of contract, non-compliance with Brazilian laws, or misconduct. It is also common for contracts to include penalty provisions (such as liquidated damages) for delays or non-performance. See also [Indemnities](#).
- **Termination.** Contracts commonly specify termination rights and consequences. If the contract is silent and termination rights cannot be inferred from the nature of the service or local custom, then either party may terminate the contract at any time upon prior notice. The Civil Code does not expressly require termination notice to be given in writing. However, as a matter of market practice and legal certainty, notice is typically given in written form, as it may be otherwise difficult to prove.

Customer's Obligations

Implied Customer Obligations

Customers of service contracts may be subject to implied obligations even when they are not expressly set out in the contract. These include general obligations to:

- Contract with the service provider in good faith.
- Pay the agreed price for the services performed.

According to some judicial assessments (*arbitramento*), where prices and arrangements for making payment have not been agreed by the parties, compensation will be determined in accordance with:

- The length of service.
- The quality of the work provided.
- What is customary for the type of service.

Brazilian law provides that the payment is due once the services have been rendered, although advance or instalment payments may be agreed between the parties. See [Price and Payment](#).

Customers are also reasonably expected to:

- Provide correct and complete information to enable the service provider to perform its obligations.
- Provide access to facilities, systems, or personnel when required.

These obligations are considered statutory duties. Failure to comply with these duties may give the provider the right to terminate the contract, as well as seek indemnification for losses and damages.

Exclusive Purchase Obligation

Exclusive purchase obligation clauses are not uncommon in B2B service contracts in Brazil, particularly when used to ensure continuity of service by the service provider or to protect the investments made by the services provider. These clauses are typically structured as exclusivity provisions requiring the customer to obtain certain services only from the provider for a defined term. However, these clauses must respect competition rules and must not amount to tying arrangements or mixed bundling (*venda casada*), which are generally prohibited.

In B2B arrangements, exclusivity rights are generally enforceable. To be valid, the exclusivity arrangement must:

- Have an economic rationale (for example, to protect investments).
- Be limited in scope to only cover competing products or services.
- Not reduce competition by preventing a customer's access to existing alternative service sources.

For more information on exclusive arrangements, including tying and bundling, see [Practice Note, Abuse of Dominance in Brazil: Exclusivity Agreements](#).

Other Customer Obligations

In addition to general payment obligations, services contracts typically include provisions relating to:

- Price adjustments. In view of Brazilian inflation, customers may be subject to price adjustments which tend to be tied to local indexes or other economic indicators. See [Price Adjustment Mechanisms](#).
- Confidentiality requirements. Customers must keep any information received during the provision of services confidential. This is usually a mutual obligation. However, the service provider is often subject to more stringent rules.
- Compliance with the law. Customers must comply with all applicable laws, including anti-corruption, data protection, and sector-specific regulations. This is usually a mutual obligation.
- Cooperation, access to facilities and resources. Customers must not obstruct or delay the service provider's performance of the services. If the service provider requires access to the customer's premises, systems or materials, the customer must enable such access.
- Non-solicitation. The customer is usually prohibited from hiring or soliciting any of the service provider's personnel during the contract and for a specific period post-termination. This tends to be a mutual obligation. However, the customer is usually subject to more stringent rules.

Price and Payment

Legal Requirements

Parties are free to agree payment terms, including the time, place, and method of payment, provided they do not breach mandatory rules (for example, consumer law and anti-money laundering regulations and, where applicable, foreign exchange regulations). If the payment requirements are not specified in the contract, payment should occur on completion and at the place of delivery of the services (Articles 327 and 597, Civil Code).

Various payment methods can be used to satisfy the services fee, including bank transfer, instant payment (PIX), and bank slip (*boleto bancário*). For international transactions, payments are also subject to Brazil's foreign exchange legal framework, including [Law No. 14,286/2021](#) and applicable regulations issued by the Brazil Central Bank. For more information on Brazil's foreign exchange law, see [Practice Note, Regulation of Foreign Investment in Brazil: Foreign Exchange Law](#).

Payments between Brazilian residents must be made in Brazilian Real (BRL). Any payment obligations between Brazilian residents in foreign currency, or linked to a foreign currency, are null and void (except in specific cases, such as in case of importation of services or goods).

With regards to late payment, it is common practice to include provisions establishing a fine, plus adjustment for inflation and delay interest. If the contract is silent on the matter, the Civil Code allows the supplier to demand an adjustment for inflation and delay interest, plus damages (if applicable). The Civil Code provides that set-off rights are possible when two parties owe each other liquid and enforceable debts of the same kind. Parties are free to modify or waive set-off rights contractually. For more information on the use of set-off clauses, see [Quick Compare Chart, Boilerplate – Performing the Agreement](#).

Pricing Approaches

Different pricing approaches may be used depending on the nature of the services, for example:

- Fixed-price model. This is the most common approach when the scope of the services is well defined.
- Time-and-materials basis. This approach is typical when the scope of the work is more flexible or uncertain (such as in software development, certain construction works or advisory services). In this case, pricing may be applied according to actual hours worked and materials used or according to agreed hourly or daily rates. To manage costs, these contracts usually include estimated budgets or caps.

A hybrid model can also be adopted, combining fixed pricing for certain deliverables with "time and material" pricing for additional work or change requests.

Other pricing approaches include:

- Unit pricing. This model may be used when services are repetitive and measurable.
- Retainer or subscription models. These models involve monthly or annual fees for ongoing services.
- Performance-based pricing. This model links payment to key performance indicators (KPIs) or results.

Termination fees are relatively common, particularly in long-term or exclusive service contracts, aiming to compensate the provider for early termination. Termination penalties must be reasonable and cannot exceed the main obligation amount.

Price Adjustment Mechanisms

In Brazil, contracts are binding and must be honored in accordance with their terms (Articles 421-422 and 478, Civil Code). Therefore, price increases after execution of the contract are not permitted unless expressly agreed. Price adjustments are typically permitted either:

- Periodically (usually after 12 months from the date of the contract's execution).
- Upon the occurrence of specific events (such as changes in tax rates or significant cost increases).

These adjustments are usually limited to a percentage or tied to an official index (for example, inflation indices).

Tax Considerations

The tax regime applicable to services rendered in Brazil is complex for the following reasons:

- Federal, state, and municipal governments have independent taxing powers, meaning taxes are imposed at multiple governmental levels (although these powers must still observe the limits imposed by federal laws and the [Federal Constitution](#)).
- Various tax rates apply depending on the specific service type, location, and business structure.

As of calendar year 2026, Brazil's tax regime imposes taxes on services at the federal and municipal level:

- Federal contributions (PIS/COFINS). This is levied on gross revenue. Depending on the payer of the tax, contributions are calculated based on the:
 - cumulative regime. Certain types of taxpayers such as financial institutions and telecommunications companies must follow the cumulative regime, which uses a "presumed profits" model for income and applies a 3.65% combined rate. No tax credits or deductions are available; and
 - non-cumulative regime. This sets a rate of 9.25%, although certain amounts are recoverable or tax credits can be applied when certain conditions are met.

Certain types of transactions are exempt from PIS/COFINS, such as service or asset exports that result in funds entering Brazil.

- Municipal services tax (ISS). This is due when the service falls within a specified list of services set out in [Supplementary Law No. 116/2003](#) (including services that are rendered abroad by a foreign service provider to a local customer). Payment is due to the municipality within which the service provider/importer is located.

Depending on the type of service provided, ISS rates vary from 2% to 5%. The service provider is responsible for paying the ISS, although in certain situations, the customer may be required to make a tax withholding and then pay the ISS to the applicable municipality on the service provider's behalf (for example, when services are rendered abroad). ISS does not apply to exports of services, provided their results do not occur in Brazil (although this matter remains subject to dispute in the Brazilian courts).

In addition, state VAT (ICMS) must also be paid if the service concerns interstate or intermunicipal transport services or communication services, including in relation to services rendered abroad. Depending on the state, ICMS rates vary from 12% to 23% of the overall service price. As a rule, the payer of ICMS must be the service provider or importer of the services, although state legislation provides that the customer can be responsible for paying the ICMS due on certain local transport services. ICMS is payable to the state where the local transport service was initiated or where the communication services were performed. ICMS is a non-cumulative tax, which means taxpayers may be eligible for reductions or tax credits. The export of services from Brazil are not subject to ICMS, apart from any aspects that occur within Brazilian territory (for example, local transport services).

Reforms to Brazil's tax regime were introduced in Supplementary Law No. 214/2025 (known as the Tax Reform on Consumption) which is expected to create a new regime for tax on services from 2027 to 2032.

Deliverables

Defining Deliverables

The concept of deliverables is recognised and utilised in Brazil, especially in sectors such as IT, consulting, and engineering. However, there is no statutory definition. Therefore, parties are free to set out their own required deliverables in services contracts.

When drafting provisions that cover deliverables, it is recommended for parties to include:

- A clear description of each deliverable (for example, whether they cover reports, software code, designs, or documentation).
- The relevant acceptance criteria, including the requisite quality standards and the timelines for providing the deliverables.
- The precise format and delivery method (for example, digital files or hard copies).
- Any IP rights or other matters related to the deliverables.

Implied Terms

Although the term deliverables is not expressly defined at law, Brazilian law implies certain obligations regarding the quality and fitness for purpose of materials and results to be delivered as part of a services engagement. Articles 421 to 422 of the Civil Code require service providers to perform the services in accordance with the contract as well as observe the principles of good faith and the social function of the contract (that is, consistent with the principles of good faith, balance, and the protection of legitimate third party or social interests). Therefore, the provider is expected to comply with all provisions established in the contract, including the deliverables' specifications.

These obligations are considered legal duties, with a breach typically resulting in contractual liability for damages (including losses) and specific performance.

Hybrid Transactions

It is common for transactions to involve the provision of services alongside the transfer of ownership of tangible goods or materials produced as part of those services. These types of hybrid transactions are common, for example, in:

- Manufacturing contracts, where the provider produces physical items tailored to the customer's specifications.
- Software projects, which require the delivery of hardware or packaged software alongside the implementation services.
- Engineering agreements, which tend to cover both design services as well as the delivery of any related equipment or components.

However, hybrid transactions require special considerations as they may have unique consequences. For example:

- Hybrid transactions may trigger different tax obligations, requiring careful allocation of values to avoid double taxation.
- Certain sectors may impose specific rules for the supply of goods, such as licensing requirements, labeling obligations, or quality standards, which may affect contract performance.

Service Delivery Considerations

Automatic Transfer of Employees

It is uncommon in Brazil for service contracts to include an obligation to automatically transfer the service provider's employees upon the termination of the contract.

Brazilian employment law does not provide for automatic transfers. If the customer requests an employee's transfer, the law requires the prior termination of their employment with the service provider and payment of mandatory compensation benefits. For this reason, a customer who wants to bring a service provision in-house using the workers employed by a service provider would be expected to indemnify the service provider for all labour dues and taxes arising from the termination of the transferred employee. Such an arrangement would have to be set out expressly in the contract.

Notwithstanding express provisions on such a transfer, customers face a risk of subsidiary liability. This risk can arise when either:

- An employer (in this case, the service provider) fails to pay those employees who have rendered services to the customer.
- An individual who has rendered services to a customer through a service provider attempts to reclassify their relationship with the customer as a direct employment relationship (especially when the provision of the services involves a level of subordination of personnel to the customer's team).

To reduce the risk of reclassification, services contracts usually include a clause stating that:

- No employment relationship will arise between the provider's personnel and the customer.
- The provider is solely responsible for hiring, compensating, and managing its staff.
- The provider will indemnify the customer for any labour claims brought against the customer by the provider's employees, including claims arising from any alleged labour succession.
- The customer has the right to audit the service provider's payments of labour dues and taxes in relation to those employees assigned to provide the services to the customer (see [Audit Right](#)).

Use of Subcontractors

It is common for service contracts in Brazil to include provisions stating that:

- The service provider cannot subcontract its services without the customer's prior written consent.

- The service provider is permitted only to subcontract its services in accordance with pre-approved consent under specific situations (such as where the subcontracted services are to be provided by companies affiliated with the service provider, or other pre-defined subcontractors).

As a general rule, if the service provider appoints a subcontractor, it remains liable for the performance of the services stipulated under the contract (Articles 932(III) and 933, Civil Code). For this reason, it is common to include provisions stipulating that the service provider will be both:

- Liable for the performance of the services, including any of the subcontractor's acts or omissions.
- Responsible for ensuring that the subcontractor complies with all applicable laws and rules set out in the contract (for example, confidentiality obligations).

The service provider may have a legal right of recourse against a subcontractor should the provider be held liable by the customer (or a third party) for damages caused by any of the subcontractor's acts, errors, or omissions.

Audit Right

Audit rights are common in contracts related to certain sensitive sectors (for example, agreements for engineering services and certain regulated industries).

Where applicable, audit clauses allow the customer to verify, upon prior notice and during normal business hours, the service provider's compliance with contractual obligations such as service levels, security requirements, and regulatory standards. Audits tend to cover aspects such as a customer's right to:

- Review certain documents.
- Confirm performance metrics are being met.
- Confirm data protection and anti-corruption measures are in place and adhered to.

In exchange for agreeing to grant a customer audit rights, service providers often require the customer to:

- Assume responsibility for all costs and expenses associated with the audit.
- Exclude from the audit any unrelated data or third-party confidential information.
- Keep confidential all information accessed during the audit.
- Agree to a frequency limit (for example, no more than once or twice per year).
- Provide advance notice before commencing an audit.

In some cases, the service provider may also use an independent third party to conduct the audit. The independent auditor may be selected by the mutual agreement of the parties.

Changes to the Services

Changes to the scope, timelines, or pricing typically require written agreement between the parties. These changes are often documented in an addendum or amendment signed by the relevant authorised representatives to ensure clarity and enforceability.

For long-term service agreements, a "change in service clause" is more common. This allows the parties to establish a mechanism to submit change requests, evaluate their impact and cost, and subsequently obtain the approval of both parties.

Insurance

Requirements to obtain and maintain insurance policies usually relate to contracts that involve operational risks, professional liability, or regulatory requirements, with the general aim of mitigating financial exposure and ensuring compliance with industry standards. The obligation to insure usually lies with the services provider, although in some cases obligations can be mutual (such as for joint operations or shared facilities).

When applicable, service contracts often specify matters such as:

- Minimum coverage amounts.
- The type of insurance coverage to be purchased (for example, general liability, professional liability, and so on).
- An obligation to maintain coverage throughout the term of the relevant contract and beyond.

Depending on the risks involved in the services to be provided, the customer may also request to be named as an additional insured party.

Warranties, Conditions, and Representations

It is common for services agreements to include warranties, conditions, and representation terms, especially when the agreement involves complex negotiations. Under the Civil Code:

- A condition refers to the will of the parties to make a legal transaction subject to a future and uncertain event.
- A representation refers to a statement/assurance made by one party that if false may trigger liability for misrepresentation.
- A warranty means the legal or contractual obligation to repair or replace a defective service/product within a specific term. It also has a secondary meaning in Brazil which refers to the principle established at common law that guarantees a statement or assurance about factual matters in a contract. For example, a party might warrant that it has obtained all internal approvals necessary to enter into the contract.

Representations and warranties generally involve statements regarding the authority to enter into the contract and the technical capacity to perform the services. Depending on the context, warranties and representations may be interchangeable in practice.

Parties usually include an "entire agreement clause" and express disclaimers establishing that no other warranties, conditions, or representations apply beyond those expressly set out in the contract.

Indemnities

In Brazil, a general right of indemnity is provided for under Articles 389 and 927 of the Civil Code. Indemnity obligations are commonly included in contracts for the supply of services.

If an indemnity provision is included, it usually establishes an obligation for the service provider to indemnify the customer for any loss or damage arising from any act or omission attributable to the provider in the rendering of the services (for example, failure to adhere to Brazilian employment laws, or obligations related to tax, civil law, social security, intellectual property, or data protection). Depending on the nature of the services being provided, it is also possible for indemnities to apply to the customer.

As a matter of public order, certain liabilities cannot be waived, limited, or transferred by contract (for example, liabilities relating to consumer protections, rights of employees, environmental protection and criminal liability). Any clause seeking to exclude or reduce a service provider's liability for any defects it has caused to its product or service will be considered abusive and therefore held null and void.

While indemnity provisions are generally enforceable in B2B contracts, they may be limited or held unenforceable if they conflict with mandatory law or public policy. The key legal bases that would limit an indemnity provision include:

- Articles 421 to 422 of the Civil Code, which subjects contractual freedom to the social function of the contract and the principles of good faith, limiting indemnities that are abusive or contrary to mandatory norms.
- The mandatory statutory regimes referred to above, where liability cannot be waived, limited or transferred by contract (for example, in relation to consumer, employment, and environmental protections and Brazilian criminal law).
- Public policy principles, under which clauses seeking to exclude liability for wilful misconduct (*dolo*) or gross negligence (*culpa grave*) are generally unenforceable.
- Rules protecting third-party rights, under which contractual indemnities cannot prejudice non-contracting parties or override statutory liability in relation to public authorities or injured third parties.

For more information on the enforceability of indemnities and waivers, see Quick Compare Charts:

- [Contracts – Waivers.](#)
- [Service Contracts – Indemnities – Laws, Drafting, and Procedure.](#)
- [Services Contracts – Indemnities – Scope of Claims.](#)

Intellectual Property Rights

Deliverables

Brazilian law implies certain legal principles into IP deliverables when provided under services arrangements. For example:

- Where an invention, utility model, or industrial design is developed in accordance with a services agreement, the rights of ownership (and the rights to register any related patents) belong to the customer, provided:
 - the services agreement stipulates a purpose that includes research and development (R&D) or inventive activities; or
 - R&D or inventive activities result from the provider's regular services.

(Articles 88 et seq and 121, [Federal Law No. 9,279/96](#) (known as the Industrial Property Law)).

- Where software is developed under a services agreement, unless the contract stipulates otherwise, the customer owns the rights to any software developed under the contract when:
 - R&D activities are expressly referred to as the contract's purpose;
 - R&D activities result from the service provider's obligations; or
 - the contract expressly foresees the provision of R&D as being among the service provider's regular service activities.

(Article 4, [Federal Law No. 9,609/98](#)) (known as the Software Law)).

Unless the agreement states otherwise, rights to authorised software derivations belong to the authorised person that created them.

- Unless the agreement states otherwise, where the services agreement involves the development of maskworks (that is, semiconductor chip or circuit designs), the customer owns the rights to the works developed when:
 - the creative activities are due to the service provider's obligations under the contract; or
 - the creation of the maskworks was due to the customer's resources, technological information, trade secrets, materials, facilities, or equipment.

(Article 28, [Federal Law No. 11,484/07](#) (known as the Integrated Circuits Law)).

- Regarding the development of plant varieties, the customer owns the rights to the new and essentially derived varieties when their development occurs as a result of the performance of a services agreement (provided the purpose of the agreement includes this type of research activity in Brazil) (Article 38, [Federal Law No. 9,456/97](#) (known as the Plant Varieties Law)).

Where the customer requires ownership of IP rights protected by copyright (other than software), the transfer (assignment) of the relevant rights must be expressly stated in the service contract to enable the assignment (Articles 11 and 49 et seq., [Federal Law No. 9,610/98](#) (known as the Copyright Law)). To effect a copyright assignment under Brazilian law (which can be amended or further expanded in the contract):

- The assignment, whether total or partial, must be in writing. The law presumes an exchange of consideration (payment) for the assignment (if no payment is due, this must be specifically indicated in the contract).
- The assignment's duration, or the fact that it is definitive, must be expressed in the agreement. If the agreement is silent, the law infers a maximum term of five years, after which the assigned rights will revert to the assignor.
- Unless otherwise agreed by the parties, the geographic scope of the assignment is limited to the country where the agreement is signed.
- The interest assigned may only cover a use that existed at the time the agreement was executed. Valid types of use include the reproduction, editing, adaptation, translation, synching, distribution, and use of the assigned work (among others).
- If the agreement does not precisely define the scope of rights assigned, its scope will be interpreted in a restrictive manner to include only what is essential to comply with the agreement (for example, an agreement for digital distribution would include only the right to digitally distribute the work);
- An assignment of copyrights to future works may only include works created within the five years following the assignment date. Where an assignment of future works does not specify such term or covers works created beyond five years, the coverage term will be reduced to five years.
- Moral rights cannot be assigned or waived (Article 27, Federal Law No. 9,610/98). Moral rights include (among others) the right to claim authorship, the right to have the author's name associated with the work, the right to make the work remain unpublished, and the right to oppose modifications to the work (Article 24, Federal Law No. 9,610/98).

Intellectual Property Infringement

Contractual warranties, conditions, or indemnities for infringement of third-party IP rights are generally enforceable and common in Brazil. Contractual warranties and conditions generally relate to matters such as ownership, originality, non-infringement of third-party rights, and the ability to assign/license the work, as well as any indemnification obligations when warranties are not complied with.

The most common remedies associated with infringements relating to IP rights are:

- Contractual fines. These can be:
 - compensatory, where the affected party is limited to indemnification up to the amount of a designated contractual fine (that is, liquidated damages are not possible); or

- non-compensatory. In this case, the type of fine must be expressly set out in the agreement. The affected party can seek indemnification for damages in addition to receiving the fine if the damages exceed the amount of the fine.
- Injunctions.
- Specific performance.
- Damages.

However, with the exception of contractual fines, it is unusual to specify the types of legal remedies as they are already provided for by law. For example, the obligation to indemnify stems from the law and not from the contract, and the right to an injunction does not require a specific contractual provision in this regard.

Limitation and Exclusion of Liability

Enforceability

Limitation and exclusion of liability clauses, as well as clauses that provide caps on liability, are accepted but are controversial. These clauses are lawful provided they do not conflict with matters of public order or consumer rights (particularly in contracts involving parties with unequal bargaining positions).

However, limitation or exclusion of liability clauses for matters related to wilful misconduct or gross negligence are generally unenforceable. Furthermore, such a clause can also be challenged when the agreed cap is disproportionate to the actual damages sought or where liability is an essential or unavoidable aspect in relation to the transaction. However, it is both common and often advisable for parties to include all necessary limitations and to exclude certain types of damages in services contracts (for example, indirect losses such as a loss of profits).

Limitation and exclusion clauses should be expressly negotiated and documented to reflect mutual understanding between the parties. When including such provisions, clarity and good faith are essential.

Structure

Liability limitation and exclusion clauses are typically set out in a dedicated section and drafted in clear, specific language to avoid ambiguity. It is common to combine liability limitations with exclusions for indirect damages, while expressly carving out liability for specific matters such as gross negligence, fraud and mandatory statutory obligations.

Liability is usually capped by reference to the amounts paid under the contract, with formulations including caps equal to the total fees paid in the previous 12 months or the full amount of the contract. In some cases, higher caps apply (although situations such as gross negligence, fraud, and the like should be carved out from the cap).

Liability limitation and exclusion clauses frequently exclude indirect damages, loss of profits, and loss of business opportunities.

While these types of provisions are generally mutual in balanced commercial agreements, in customer-drafted contracts or adhesion agreements they tend to impose broader liability on the service provider while limiting the customer's exposure.

For more information on liability caps and exclusions, see Quick Compare Charts, [Services Contracts - Liability Exclusions and Other Liability Matters](#) and [Services Contracts – Liability Caps](#).

Remedies

A contractual breach occurs when a party fails to timely perform its contractual obligations (whether express or implied). Unless otherwise agreed, a breach generally entitles the non-breaching party to:

- Claim compensation for both actual losses and lost profits that resulted directly from the other party's breach (subject to certain legal exceptions).
- Terminate the contract.

Damages and contractual penalties are the primary remedies. The goal of damages is to restore the injured party to the position where they would be had the contract been properly performed.

Brazilian law also provides for other types of remedy, such as:

- Rectification (that is, correcting a drafting error to reflect the parties' true intentions in the agreement).
- Specific performance.
- Injunctions.
- Termination.

(Article 607, Civil Code.)

According to the [Civil Procedure Code](#) (*Código de Processo Civil*) (Law No. 13,105/2015), the courts will only award damages when either:

- They are specifically requested by the claimant.
- The court deems specific performance of the contract to be an inadequate remedy under the circumstances.

Customer's Remedies

A service provider may breach the contract by (among other things):

- Failing to perform the services (in whole or in part).

- Delivering the services late.
- Failing to meet its quality or warranty obligations.

In such cases the customer is entitled to claim damages and may seek (as appropriate) rectification, specific performance, or an injunction. The customer can also terminate the contract for breach. Termination for breach of contract is a recognised concept under Brazilian law, with the contract generally setting out the relevant time periods within which the breaching party must cure the breach before the contract can be terminated. Contracts often include:

- Cure obligations (at the service provider's expense).
- Rights for the customer to withhold payment.
- Rights for the customer to obtain substitute services (at the service provider's expense).

Remedies can be limited by contract, but not for fraud, wilful misconduct, or mandatory legal duties. If the service provider fails to perform in part due to the customer, the provider's liability may be reduced or excluded. Additionally, customers must mitigate their losses, and may lose certain remedies due to:

- Acceptance of the services without reservation.
- Failing to act within agreed deadlines.

Contracts typically exclude indirect damages and loss of profits, subject to carve-outs for serious misconduct.

Service Provider's Remedies

A customer may breach its contract with a service provider by:

- Wrongfully rejecting the services.
- Refusing deliverables.
- Failing to pay the provider.

In such cases, the service provider can both seek damages for direct losses and lost profits and claim contractual penalties (if agreed). Brazilian law allows the provider to terminate the contract for breach and, in most cases, suspend performance until payment is made. Specific performance is also possible.

Recoverable losses include damages and loss of profits (subject to the requisite causation and foreseeability requirements). Indirect damages are often excluded by contract. It is also permissible for service providers to charge interest and to impose late payment penalties, as Brazilian law implies statutory interest and adjustment for inflation for overdue amounts.

For more information on a party's right to termination, see [Quick Compare Chart, Contracts – Termination Rights](#).

Choice of Foreign Law and Jurisdiction

Choice of Law

[Decree-Law No. 4,657/1942](#) (known as the Introduction to the Rules of Brazilian Law Act) (as amended) provides the following rules regarding choice of law provisions:

- Obligations, such as those set out in a contract for the supply of services, must be governed by the law of the place where the obligation is created. This implicitly rejects choice-of-law clauses that require the application of a different governing law.
- If the parties to an agreement are not in the same location when the contract is signed, the contract will be governed by the law of the jurisdiction of the proposing party (that is, the party that issued the contractual offer). Therefore, if both parties sign the agreement in Brazil, the contract is governed by Brazilian law. If the proposing party is in Brazil while the other is not, the contract is also governed by Brazilian law.

However, [Law No. 9,307/1996](#) (known as the Arbitration Law) allows the parties to choose the applicable law if the contract is subject to arbitration (see [Arbitration](#)).

Choice of Jurisdiction

A choice of governing jurisdiction in a contract for the supply of services is possible:

- Where the parties elect for disputes to be handled by arbitration rather than court proceedings (Law No. 9,307/1996).
- In a cross-border agreement, where the parties elect for disputes to be handled by a chosen foreign court. Brazilian law does, however, retain exclusive jurisdiction in relation to certain types of disputes, such as those regarding real estate located in Brazil.

When both parties are based in Brazil, the Civil Procedure Code limits the courts that parties can choose.

Any foreign court decision or international arbitral award must first be ratified by the Superior Court of Justice (STJ) to be enforceable in Brazil. The STJ does not revisit the merits of the case but conducts a basic review to ensure it meets the requirements for recognition (for example, in relation to jurisdiction, due process, authenticity, and compatibility with public order).

For more information on selecting a contract's governing law and venue, see [Practice Note, Governing Law and Jurisdiction Clauses: Overview \(Brazil\)](#).

Alternative Dispute Resolution

Arbitration

Arbitration is widely recognised in Brazil and is regulated under Law No. 9,307/1996.

Arbitration may be used as an alternative to formal court proceedings, particularly when the contract involves large market players or high-value transactions. The costs involved in arbitration are usually higher than those related to disputes in courts. One advantage of arbitration is that the process remains confidential. Arbitral decisions are generally final and not subject to appeal.

The parties' choice to elect for arbitration over court proceedings in the contract, including the designation of a specific arbitration tribunal, is generally enforceable under Brazilian law. Brazil's courts respect the parties' autonomy and typically uphold arbitration clauses and will decline jurisdiction when valid arbitration provisions exist within a contract.

In arbitration, the parties are free to define the applicable law and the arbitration venue. Domestic arbitral awards have the same effect as a court judgment and are enforceable without further judicial confirmation, while foreign arbitral awards are enforceable subject to ratification by the STJ.

For more information on arbitration clauses, see [Practice Note, Arbitration in Brazil: Arbitration agreements](#) and for a sample clause, see [Standard Clause, Brazil: ad hoc arbitration clause](#).

Alternative Dispute Resolution Clauses

While arbitration is the most common alternative dispute resolution (ADR) mechanism, others such as mediation, conciliation, and expert determination are possible. These methods are especially common for contracts involving complex technical issues or which require ongoing relationships. They may be used to avoid litigation/arbitration or as a preliminary step prior to using those other methods.

There are no express legal restrictions on parties electing to use ADR mechanisms in their contracts and parties are free to agree on the relevant procedures, provided their chosen mechanism does not violate any mandatory legal provisions.

Any chosen ADR mechanism is enforceable. However, ADR mechanisms other than arbitration will not prevent a party from seeking further redress or determination via the courts or through arbitration (as applicable).

Other Legal and Contractual Considerations

Other Legal Considerations

Other laws that may impose obligations or liability when providing services in Brazil include:

- Employment law. If the arrangement involves service personnel, the customer may face joint liability for labour claims if the provider fails to comply with all relevant employment obligations. See [Practice Note, Hiring in Brazil: Engaging an Independent Contractor or Consultant](#).
- Tax law. The customer may be held secondarily liable for certain tax obligations, especially with regards to withholding taxes or social security contributions. See [Practice Note, Hiring in Brazil: Social Security, and Other Contributions](#). See also [Practice Note, Consultancy Agreements: Consultant Deemed an Employee: Tax Consequences](#).

- Anti-corruption/compliance. Law No. 12,846/2013 and its related regulations often require companies to flow down compliance obligations to providers to mitigate liability for unlawful acts.
- Environmental law. In regulated sectors, the customer may share liability for any environmental damage caused by the service provider, as these rules are of public order. For details of Brazilian environmental laws, see [Practice Note Overview, Construction and Projects: Overview \(Brazil\): Environmental Issues](#).
- Data protection. Contracts must include provisions ensuring compliance with data protection obligations, often requiring flow-down clauses to data processors or subcontractors. See [Practice Note, Data Localization Laws: Overview \(Brazil\)](#).
- Public procurement law. When contracting with governmental entities, the service provider will need to comply with strict integrity and transparency requirements. The customer may also need to cascade these obligations to subcontractors to avoid liability for corruption or fraud. For details of anticorruption laws, see [Practice Note, Construction and Projects: Overview \(Brazil\): Prohibiting Corrupt Practices](#).
- Regulated industries. In sectors such as financial services, healthcare, and telecoms, regulations impose obligations on both the customer and the service provider regarding operational, cybersecurity, and reporting standards.

Missing Contract Clauses

In Brazil, contracts often include clauses that are specific to local legal requirements which may not appear in contracts drafted in other jurisdictions. These should be included in foreign templates to ensure compliance with mandatory rules and to mitigate local risks.

Some common examples of such clauses include:

- Compliance. This clause requires compliance with specific local regulations (such as mandatory references to labour and employment obligations and tax compliance).
- Joint liability disclaimers and indemnities. This clause addresses risks under Brazilian employment law; otherwise, the customer may be held jointly liable for the service provider's employment obligations.
- Language and currency obligations. These clauses establish Portuguese as the official language for contract interpretation and Brazilian currency for payment.
- Inflation adjustment. This clause is very common in Brazil due to its historically high inflation rates. The clause typically links prices to one or more official inflation index in order to preserve the value of the contract over time.

Ineffective Contract Clauses

When adapting contracts from other jurisdictions, certain clauses are usually deleted or modified to comply with local laws. Common examples include:

- Waivers of statutory rights. Clauses attempting to waive mandatory labour, consumer, or data protection rights are unenforceable.
- Language requirements. It is best practice to draft contracts in Portuguese or obtain an official translation to Portuguese for enforcement before Brazilian courts. For this reason, foreign language-only provisions are often modified or the contract supplemented with a Portuguese version or dual column (showing side-by-side the foreign language version next to the Portuguese version).
- Choice of law and forum clauses. Provisions that choose a foreign governing law or foreign venue may be invalid if they conflict with Brazilian matters of public order or mandatory jurisdiction rules.
- Excessive liability exclusions. Clauses seeking to exclude liability for damages resulting from gross negligence, wilful misconduct, or statutory obligations are usually unenforceable (see [Enforceability](#)).
- Certain common law concepts. These are often restructured to comply with local laws and rules.
- Unrestricted termination rights. Clauses granting unilateral termination without notice or compensation are typically modified to comply with the Civil Code. The Civil Code protects parties that have made a significant investment to perform the contract from unilateral termination. In those cases, the Civil Code requires the contract remain in effect for a reasonable period of time before it may be terminated. Such period must be compatible with the nature and magnitude of the investments made by the non-terminating party.

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